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October 5, 2011

VIA ELECTRONIC FILING

Jocelyn Boyd, Chief Clerk / Administrator
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: Time Warner Cable Information Services (South Carolina), LLC's Arbitration Proceedings with Farmers Telephone Cooperative, Inc., Fort Mill Telephone Co., Home Telephone Co, Inc. and PBT Telecom, Inc. PSC Docket Nos. 2011-243-C; 2011-244 C; 2011-245-C and 2011-246-C

Dear Ms. Boyd:

Enclosed for filing on behalf of Time Warner Cable Information Services (South Carolina), LLC, please find the Time Warner Cable's proposed order ruling on the arbitrations. By copy of this letter we are serving the same on counsel for the ILECs and the S.C. Office of Regulatory Staff. We will also provide a word version of the proposed order via email to Hearing Officers Butler and Dong for the Commission's convenience. Should you have any questions, please contact me.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealy

/bds
Enclosure

cc/enc: Hearing Officer Randall Dong (via email)
Hearing Officer F. David Butler, Jr. (via email)
C. Lessie Hammonds, Esquire (via email & U.S. Mail)
Jeffrey Nelson, Esquire (via email & U.S. Mail)
M. John Bowen, Jr., Esquire (via email & U.S. Mail)
Margaret M. Fox, Esquire (via email & U.S. Mail)
Julie P. Laine, Group Vice President & Chief Counsel - Regulatory (via email)
Maribeth Bailey, Senior Director Interconnection Policy – Regulatory (via email)

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket Nos. 2011-243-C, 2011-244-C, 2011-245-C, and 2011-246-C
Order No. 2011-___
October _____, 2011

In the Matter of Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable and Farmers Telephone Cooperative, Inc. (Docket No. 2011-243-C)	
In the Matter of Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable and Fort Mill Telephone Company (Docket No. 2011-244-C)	ORDER RULING ON ARBITRATION
In the Matter of Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable and Home Telephone Co., Inc. (Docket No. 2011-245-C)	
In the Matter of Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable and PBT Telecom, Inc. (Docket No. 2011-246-C)	

Section 251 of the Federal Communications Act of 1934, as amended ("Act"), provides a graduated set of interconnection requirements and other obligations designed to foster competition in telecommunications markets.[1] Section 251(a) provides that "[e]ach telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers...."[2] Section 251(b) imposes additional obligations on "all local exchange carriers" ("LECs"), including the duty to provide number portability, dialing parity, and reciprocal compensation.[3] Section 252(i) of the Act prevents discrimination and facilitates expedient competitive entry by requiring LECs to make their existing interconnection agreements ("ICAs") available to requesting telecommunications carriers. [4]

These consolidated proceedings require this Commission to decide (1) whether Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable ("Time Warner Cable" or "Company"), is a telecommunications carrier providing telecommunications services and therefore entitled to interconnect and exchange traffic with Farmers Telephone Cooperative, Inc. ("Farmers"), Fort Mill Telephone Company ("Fort Mill"), Home Telephone Co., Inc. ("Home"), and PBT Telecom, Inc. ("PBT") (collectively "RLECs") pursuant to Sections 251(a) and (b) of the Act; and (2) whether Time Warner Cable may adopt the RLECs' valid and currently enforceable ICAs with Sprint Communications Co., LP ("Sprint ICAs") pursuant to Section 252(i) of the Act. In light of the evidence presented in these cases,

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1 *In the Matter of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253,* Declaratory ruling, FCC 11-83, WC Docket No. 10-143, adopted May 25, 2011 ("*CRC Declaratory Ruling*").

2 47 U.S.C.A. § 251(a)(1).

3 47 U.S.C.A. §§ 251(b)(2), (3), (5).

4 47 U.S.C.A. § 252(i).

the Commission answers each of these questions in the affirmative.

PROCEDURAL BACKGROUND

These matters come before the Public Service Commission of South Carolina ("Commission") on the Petitions for Arbitration ("Petitions") filed by Time Warner Cable, which seek resolution of open issues between Time Warner Cable and the RLECs regarding Time Warner Cable's requests to negotiate ICAs with each of them. Since the Petitions raise the same issues, the Commission consolidated the arbitrations for purposes of administrative efficiency. The Commission appointed B. Randall Dong, Esquire to serve as a Hearing Officer.

Pursuant to Section 252 of the Communications Act ("Act"),[5] Time Warner Cable provided notice to the RLECs of its intention to adopt the Sprint ICAs on January 20, 2011. Time Warner Cable filed its Petitions on June 13, 2011, pursuant to Section 252(b) of the Act. In the Petitions, Time Warner Cable indicated that the RLECs refused to allow Time Warner Cable to adopt the Sprint ICAs and, further, refused to negotiate interconnection at all with Time Warner Cable. In their collective response filed on July 8, 2011, the RLECs stated the same reason for their refusal: that Time Warner Cable purportedly is not a telecommunications carrier offering telecommunications services. The parties subsequently filed written direct, rebuttal, and surrebuttal testimony.

Time Warner Cable filed a Motion to Clarify the Petitions for Arbitration with a Revised Petition for Arbitration on August 16, 2011. In the Motion, Time Warner Cable indicated that the RLECs asserted a new issue in their testimony filed on August 8, 2011. In particular, in addition

5 47 U.S.C.A. § 251(a)(1).

to their legal arguments regarding the status of Time Warner Cable, the RLECs' asserted that the Sprint ICAs are not available for adoption because the initial term for each ICA had expired. Time Warner Cable's Motion requested that it be allowed to clarify that the real issue in the arbitration is whether Time Warner Cable is entitled to interconnect with the RLECs under 47 U.S.C.A. § 251. The RLECs filed their Response to the Motion and the Revised Petition on August 19, 2011. The Hearing Officer issued a Hearing Officer Directive on August 24, 2011, granting the Motion to Clarify and accepting the Revised Petition and Revised Response for filing.

A consolidated hearing was held on August 29, 2011, with the Honorable John E. "Butch" Howard, Chairman, presiding. At the hearing, Time Warner Cable was represented by Frank R. Ellerbe, III and Bonnie D. Shealy of Robinson, McFadden & Moore, P.C. Julie P. Laine of Time Warner Cable adopted the Direct Testimony of Maribeth Bailey and then presented her own Direct and Rebuttal Testimony.

The RLECs were represented at the hearing by M. John Bowen, Jr., and Margaret M. Fox of the McNair Law Firm. The RLECs presented the Direct and Surrebuttal Testimony of Douglas Duncan Meredith.

The South Carolina Office of Regulatory Staff ("ORS") was represented at the hearing by Jeffrey M. Nelson. ORS presented the Direct Testimony of Dawn M. Hipp.

LEGAL STANDARD AND JURISDICTION

As noted above, Sections 251(a) and (b) of the Act impose a number of specific obligations on the RLECs to interconnect and exchange local traffic with other telecommunications carriers, including competitive local exchange carriers ("CLECs") like Time

Warner Cable.[6] After a telecommunications carrier makes a request for interconnection with another telecommunications carrier, and negotiations have continued for a specified period of at least 135 days, the Act allows either party to petition a state commission for arbitration of unresolved issues.

Section 252(i) of the Act further provides that the RLECs "shall make available any interconnection, service, or network element provided under an agreement approved under [Section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as provided in the agreement."[7]

The Federal Communications Commission's regulation implementing Section 252(i) states:

> (a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (i.e., local, access, or interexchange) as the original party to the agreement.
>
> (b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:
>
> (1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or
>
> (2) The provision of a particular agreement to the requesting carrier is not technically feasible.

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6 *See* 47 U.S.C.A. §§ 251(a)-(b).

7 47 U.S.C.A. § 252(i).

(c) Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.[8]

The Commission is charged with resolving the disputed issues in these proceedings under Sections 252(b)(4) and (c) of the Act. Pursuant to these obligations, the Commission shall ensure that its arbitration decision meets the requirements of Sections 251 and 252 and any valid FCC regulations promulgated thereunder.

DECISION ON THE ISSUES

The issues presented in this arbitration are (1) whether Time Warner Cable is a telecommunications carrier entitled to seek interconnection and exchange of traffic with the RLECs under 47 U.S.C. § 251 and (2) whether the current Sprint ICAs with the RLECs are available for adoption by Time Warner Cable.

A. Is Time Warner Cable a telecommunications carrier entitled to interconnection and exchange of traffic pursuant to Sections 251(a) and (b) of the Act?

The Commission holds that Time Warner Cable is a telecommunications carrier in South Carolina. Therefore, Time Warner Cable has the right to interconnect and exchange traffic directly with the RLECs pursuant to Section 251 of the Act.

1. Time Warner Cable's Position

No party disputes the fact that, by obtaining a certificate of public convenience and necessity ("CPCN") and publishing a tariff, Time Warner Cable holds itself out as a telecommunications carrier for the purpose of providing its retail VoIP service in South Carolina.

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[8] 47 C.F.R. § 51.809.

(Tr. p. 44, 48, 51-52). Time Warner Cable, in its capacity as a certificated CLEC, intends to replace Sprint as the interconnection provider necessary for the provision of its retail VoIP services by directly interconnecting with the RLECs. (Tr. p. 28 & 44). Time Warner Cable states that it will perform the exact same functions that Sprint currently provides pursuant to Sprint's ICAs with the RLECs. (Tr. p. 57-58). Because Time Warner Cable has assumed all of the duties and obligations of a regulated telecommunications carrier in South Carolina, Time Warner Cable concludes that it is entitled to the rights bestowed on a telecommunications carrier under Section 251 and 252 of the Act, including direct interconnection. (Tr. p. 59 & 76-78).

In support of its position, Time Warner Cable relies on decisions by the FCC regarding the rights of providers such as Time Warner Cable. *First*, Time Warner Cable states that the FCC has determined that voice providers like Time Warner Cable are entitled to direct interconnection, notwithstanding their reliance on VoIP technology when they elect to operate as a telecommunications carrier. (Tr. p. 43-44). In particular, the FCC has held that "if a provider of interconnected VoIP holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements," it is entitled to invoke the rights conferred under Section 251.[9] Time Warner Cable states that it satisfies the FCC's standard by complying with various state and federal requirements applicable to CLECs. (Tr. p. 44). *Second*, Time Warner Cable relies on the FCC's decisions in *Fiber Techs. Network, L.L.C. v. N. Pittsburgh Tel. Co.* and *Bright House Networks, LLC v. Verizon Cal., Inc.*, in which the FCC made clear that an entity's possession of a CPCN and its publication of tariffs constitute sufficient evidence of its

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9 *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers*, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 ¶ 38 n.128 (2005) ("*IP-Enabled Services Order*").

status as a telecommunications carrier under federal law, not just under state law. (Tr. p. 45). *Third*, Time Warner Cable states that the *2007 Time Warner Cable Declaratory Ruling*, previously applied by this Commission, and the more recent *CRC Declaratory Ruling* also confirm that CLECs such as Time Warner Cable have the right to interconnect and exchange IP-originated and IP-terminated traffic with rural carriers like these RLECs.[10] (Tr. p. 46).

Time Warner Cable states that each of these decisions is relevant in the instant proceedings and establishes its right to interconnect and exchange traffic with the RLECs as a telecommunications carrier. TWC further states that it is immaterial whether a CLEC seeks interconnection for the purpose of providing services to an affiliate, an unaffiliated third party, or, as is the case here, to enable its own provision of interconnected VoIP service directly to end users. (Tr. p. 46-47). The critical point, rather, is that if a telecommunications carrier is entitled to interconnect to enable a *non-regulated* entity to deliver VoIP traffic, then such a carrier *a fortiori* is entitled to interconnect when the retail VoIP service is offered as a certificated telecommunications service. (Tr. p. 47).

Time Warner Cable also provides evidence that it is currently directly interconnected—in ten states, including South Carolina—with a number of other LECs that are similarly situated to the RLECs, and without any major issues. (Tr. p. 28-29 & 39). In South Carolina, Time Warner Cable has direct ICAs that have been approved by this Commission with Horry Telephone Cooperative, Inc.; Hargray Telephone Co., Inc.; Verizon South, Inc.; BellSouth

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10 *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 (WCB 2007) (*2007 Time Warner Cable Declaratory Ruling"*) and *CRC Declaratory Ruling*.

Telecommunications, Inc.; and Bluffton Telephone Co., Inc. (Tr. p. 28 & 39).

Similarly, the Time Warner Cable affiliated entity in Wisconsin uses the same business model that Time Warner Cable uses in South Carolina (i.e., the Wisconsin affiliate provides VoIP services and operates as a regulated telecommunications carrier). As in South Carolina, Time Warner Cable in Wisconsin previously used Sprint for interconnection and the exchange of traffic but has chosen more recently to establish direct interconnection agreements with a number of incumbent phone companies. Time Warner Cable is in the process of transitioning all of its retail VoIP business in Wisconsin to direct interconnection arrangements. (Tr. p. 73-74). Time Warner Cable notes that Cox Communications, among other providers, has chosen to provide VoIP services by operating as a regulated telecommunications carrier for many years. (Tr. p. 73).

2. RLECs' Position

The RLECs contend that while Time Warner Cable's Digital Phone Service is a telecommunications service for state law purposes, it is not for federal Section 251 interconnection purposes. (Tr. p. 101). In particular, the RLECs assert that the separate federal definitions of "telecommunications" and "interconnected VoIP service," establish a bright-line line distinction between the two types of services for federal purposes. (Tr. p. 103-04). They claim that voice providers such as Time Warner Cable are not entitled to direct interconnection and exchange of traffic unless and until the FCC classifies interconnected VoIP as a telecommunications service. (Tr. p. 89-90). They also assert that both the Commission and the FCC require Time Warner Cable to use an intermediary wholesale carrier to interconnect with the RLECs pursuant to Commission Order Number 2009-356(A) and the FCC's *2007 Time*

Warner Cable Declaratory Ruling and *CRC Declaratory Ruling*. (Tr. p. 88 & 95). Finally, the RLECs' witness argues that harm would result if the Company were allowed to directly interconnect with the RLECs. He contends that other non-regulated providers may seek direct interconnection creating uncertainty in the regulatory process. (Tr. p.115).

3. ORSts Position

ORS agrees with Time Warner Cable that the Company should be treated as a telecommunications carrier under federal law. Ms. Hipp on behalf of ORS testified that in the last certification proceeding involving Time Warner Cable, it was ORS's position that the Company is a regulated, telecommunications carrier operating like other regulated telecommunications carriers in the State. This remains ORS's position in this proceeding. (Tr. p. 209-210). As a telecommunications carrier, the Company must comply with the statutory and regulatory requirements imposed on other telecommunications carriers in South Carolina. According to ORS, to adopt a contrary position in this proceeding would clearly conflict with ORS's position in Time Warner Cable's prior proceedings. (Tr. p. 179).

ORS also identifies several public interest concerns that could be triggered by a ruling that Time Warner Cable is not a telecommunications carrier. Ms. Hipp testified that Time Warner Cable currently is one of the top contributors to the South Carolina Universal Service Fund because it offers telecommunications services regulated under existing South Carolina law. (Tr. p. 200 & 208-209). If the Commission were to change its position on what is considered a "telecommunications service," ORS concludes that such an inconsistent position could mean that Time Warner Cable "may not have to provide contributions to the State Universal Service Fund, and that could destabilize that Fund." (Tr. p. 209). In addition, in the event of an adverse ruling

in this case, Time Warner Cable could take the position that it does not have to interconnect with other certified telecommunications carriers in the state. (Tr. p. 200).

4. Commission's Findings and Conclusion on the Telecommunications Carrier Issue.

The Commission agrees with Time Warner Cable and ORS that Time Warner Cable, operating as a certificated CLEC in the state of South Carolina, is entitled to interconnect and exchange traffic with the RLECs pursuant to Sections 251(a) and (b). Our previous findings in Order Number 2009-356(A) and relevant FCC precedent are of critical importance to this conclusion. We found in Order Number 2009-356(A) that Time Warner Cable provides telecommunications services in South Carolina, that Digital Home Phone is a regulated telecommunications service, and thus that Time Warner Cable is a "telephone utility" as defined by S.C. Code Ann. Section 58-9-10.[11] Consistent with the FCC's determinations in analogous circumstances, Time Warner Cable is entitled to avail itself of Section 251 interconnection rights as a result of these findings.

The Commission further agrees that the FCC's decision in its *IP-Enabled Services Order* dictates that a voice provider is entitled to exercise Section 251 rights when it holds itself out as a telecommunications carrier and operates pursuant to applicable state and federal regulations, as Time Warner Cable has done in South Carolina.[12] It thus follows that the unsettled statutory classification of interconnected VoIP service–whether as a matter of state or federal law–is immaterial in this case because Time Warner Cable already has agreed to operate as a regulated telecommunications carrier in South Carolina.

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[11] Order Number 2009-356(A) at 20.

[12] *IP-Enabled Services Order*, 20 FCC Rcd 10245 ¶ 38 n.128.

Moreover, the FCC clearly left the question of the federal classification of interconnected VoIP service unsettled in the *IP-Enabled Services Order* and thus did not preclude Time Warner Cable from treating its interconnected VoIP service as a telecommunications service under federal law. In particular, the FCC stated that it had made "no findings ... regarding whether a VoIP service that is interconnected with the PSTN should be classified as a telecommunications service or an information service under the Act."[13] Moreover, as the RLECs concede, (Tr. p. 90), the FCC made clear that the two definitions are not necessarily mutually exclusive.[14] We therefore reject the RLECs' assertion that the status of Digital Home Phone service as an "interconnected VoIP service" under federal law means that the service may not also be treated as a "telecommunications service" for purposes of establishing Time Warner Cable's Section 251 rights.

The fact that we limited our findings in Order Number 2009-356(A) to Time Warner Cable's status under state law also is irrelevant to this proceeding. The FCC has consistently relied on a provider's regulatory status under state law to determine its regulatory status under federal law. For example, in the *Fiber Technologies* case,[15] Fiber Technologies offered proof of its status as a "telecommunications carrier" to obtain federal pole access rights by submitting its Certificates from the Pennsylvania Public Utilities Commission and its public tariffs on file with the Commission. The FCC concluded that Fiber Technologies possession of valid state

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13 *IP-Enabled Services Order* ¶ 24.

14 *IP-Enabled Services Order* ¶ 26 (stating that the *IP-Enabled Services Order* "in no way prejudges how the Commission might ultimately classify these services and leaving open the possibility that the Commission may "later find these services to be telecommunications services"); *id.* ¶ 38 n.128 ("[I]f we find interconnected VoIP to be a telecommunications service ... .").

15 *Fiber Techs. Network L.L.C. v. N. Pittsburgh Tel. Co.*, Memorandum Opinion and Order, 22 FCC Rcd 3392 (2007).

authorizations to provide telecommunications services, together with its tariff, constituted presumptive evidence of its status as a telecommunications carrier entitled to nondiscriminatory access pursuant to 47 U.S.C.A. § 224.

The FCC made a similar finding in *Bright House Networks, LLC v. Verizon Cal., Inc.* when it held that a provider's state-issued CPCN is "public notice of ... [its] intent to act as a common carrier" under federal law.[16] Significantly, the D.C. Circuit upheld the FCC's decision in the *Bright House* case, rejecting the argument that interconnected VoIP providers' CLEC affiliates "are not 'telecommunications carriers' within the meaning of the Act."[17] The court instead held that the FCC's conclusion was reasonable, because the FCC based its decision on the fact that, like Time Warner Cable, the providers in that case (1) self-certified that they would operate as a common carrier; (2) entered into ICAs; and (3) held a CPCN.[18]

As to the RLECs' claim that Order Number 2009-356(A) required Time Warner Cable to utilize a separate wholesale interconnection provider, let us be clear: our Order included no such condition. To the contrary, we expressly declined to require Time Warner Cable to interconnect through a third party, finding that "there is no legal support" for the RLECs' request.[19] As ORS witness Ms. Hipp noted in her testimony, "the Commission did not specifically address the issue of whether TWCIS could directly interconnect with the RLECs." (Tr. p. 198). Because Time Warner Cable indicated that it intended to use an underlying carrier at that time, Order Number 2009-356(A) only addressed the requirement that the underlying carrier be authorized to do

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16 *Bright House Networks, LLC v. Verizon Cal., Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 10704 ¶ 39 (2008), *aff'd, Verizon Cal., Inc. v. FCC*, 555 F.3d 270 (D.C. Cir. 2009).

17 Verizon Cal., Inc. v. FCC, 555 F.3d 270, 275 (D.C. Cir. 2009).

18 Id.

19 Order Number 2009-356(A) at 18.

business in South Carolina, hold a valid Certificate of Public Convenience and Necessity issued by this Commission and have an interconnection agreement with each RLEC. The Commission notes that this same requirement is imposed on all CLECs in South Carolina who opt to use an underlying carrier for interconnection purposes. As indicated in Order 2009-356(A), this conclusion is consistent with existing law and regulatory authority. Therefore, we need not address the RLECs' contention that Time Warner Cable is attempting to amend its certificate in this proceeding.

Nor is there any evidence to support the RLECs' claim that the "FCC requires a wholesale provider" in the *2007 Time Warner Cable Declaratory Ruling* or the *CRC Declaratory Ruling*[20] (Tr. p. 111). Rather, the FCC issued these decisions based on facts like those in the proceeding that resulted in Order Number 2009-356(A). There is no indication that the FCC intended to limit the means by which an interconnected VoIP provider could obtain interconnection in either of those decisions. Indeed, the RLECs provided no evidence that any party in those proceedings raised the issue of whether an interconnected VoIP provider that operates as a telecommunications carrier is required to use a separate carrier for purposes of interconnection and exchange of traffic with other LECs. We therefore reject the RLECs' assertion. Indeed, we agree with Time Warner Cable that the salient point in those cases is that the FCC determined that the unsettled classification of interconnected VoIP *has no bearing* on a competitive carrier's right to interconnect with RLECs, including where the competitive carrier exchanges only VoIP traffic.[21]

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20 *CRC Declaratory Ruling*, ¶ 26 citing *2007 Time Warner Cable Declaratory Ruling*.

21 *CRC Declaratory Ruling*, ¶¶ 26-28 & n.96.

In addition, the RLECs have not provided any new or compelling justification for imposing such a discriminatory condition on Time Warner Cable. No other CLEC in South Carolina is required to use a third party to directly interconnect with incumbent carriers. (Tr. p. 205). The RLECs can point to no other state commission that has imposed such a condition on any CLEC. (Tr. p. 55-56).

Likewise, the RLECs' assertion that they would be harmed if Time Warner Cable is allowed to directly interconnect is unconvincing. The evidence presented indicates that no major issues have arisen as a result of direct interconnection with incumbent carriers in the ten states (including South Carolina) where Time Warner Cable has direct ICAs. (Tr. p. 28-29, 38-39). In contrast, the allegation that allowing Time Warner Cable to interconnect would open the door to other non-regulated telecommunications traffic has no support in the record. Time Warner Cable is a regulated telecommunications carrier holding a South Carolina certificate of public convenience and necessity. To the extent that any "non-telecommunications carrier" seeks interconnection, the RLECs could refuse on the basis that the non-telecommunications carrier does not hold a South Carolina CPCN. Indeed, one purpose of the certification process is to ensure that only qualified telecommunications carriers are eligible for interconnection. If other entities want interconnection rights under Section 251, they would have to be regulated telecommunications carriers certificated by this Commission, just like Time Warner Cable is.

B. Are the Sprint ICAs with the RLECs available for adoption pursuant to Section 252(i) of the Act?

Section 252(i) was designed to prevent discrimination and open up local markets to competition in a simple and expedient manner. It provides a "local exchange carrier shall make

available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier under the same terms and conditions as those provided in the agreement."[22] In light of the particular facts of this case, the Commission finds and concludes that the Sprint ICAs are available for adoption by Time Warner Cable pursuant to Section 252(i).

1. Time Warner Cable's Position

Time Warner Cable states that it seeks to change its current interconnection arrangement because it will be more efficient and cost effective to directly interconnect with the RLECs. (Tr. p. 38). Time Warner Cable's position is that the Sprint ICAs are valid and operative in each of the RLECs' territories and thus should be available for adoption under Section 252(i). In fact, the RLECs are currently providing interconnection to Sprint pursuant to the terms of these agreements, and Time Warner Cable is currently providing retail telephone service in the RLECs' service areas using that interconnection. (Tr. p. 27-29 & 57-58). Time Warner Cable states that it will provide the same service using the same technology for interconnection currently used by Sprint. Accordingly, Time Warner Cable believes that adopting the Sprint ICAs is the simplest and most expedient method of interconnecting and exchanging traffic with the ILECs directly. (Tr. p. 57-58).

Time Warner Cable further states that the Sprint ICAs will continue to operate in full force unless terminated pursuant to the terms of the ICAs. Time Warner Cable distinguishes this situation from one in which a party seeks to adopt an ICA that has expired or is so outdated as to make the technical aspects of the arrangement obsolete or meaningless. (Tr. p. 56-57). Time

22 47 U.S.C.A. § 252(i).

Warner Cable notes that there have been no major operational or technical issues with the Sprint ICAs. (Tr. p. 27 & 29). In particular, neither the RLECs nor Sprint have complained or raised any issues about the technical feasibility of the ICAs or continued operation of them. (Tr. p. 56 & 78-79).

2. RLECs' Position

The RLECs contend that the Sprint ICAs have "expired" because the initial term for each ICA has passed. (Tr. p. 98). As a result, the RLECs urge the Commission to find that Time Warner Cable's opt-in requests were not made within a "reasonable period of time" as required by the Commission's rules. (Tr. p. 100). The RLECs also request that the Commission establish a rule in this proceeding that ICAs cannot be adopted if the agreement is in an "evergreen" or roll-over period. (Tr. p. 100 & 165).

3. ORS's Position

ORS's position is that a request to opt-in to an ICA should occur during the initial term of the agreement. (Tr. p. 214). As a result, ORS believes that Time Warner Cable should negotiate its own ICAs with each of the RLECs or opt into ICAs that are in their initial term. (Tr. p. 213).

4. Commission's Findings and Conclusion on Adoption Issue

The RLECs have provided no justifiable reason to require Time Warner Cable to negotiate new ICAs with each of the RLECs rather than simply adopt the Sprint ICAs. As a result, the Commission finds on the basis of the record that Time Warner Cable submitted its opt-in request within "a reasonable period of time" and that the Sprint ICAs are available for Time Warner Cable to adopt under Section 252(i) of the Act.

The RLECs would have this Commission find that the opt-in period for the Sprint

ICAs—and for all ICAs, for that matter—under Section 252(i) ends at the conclusion of the initial term of each ICA. The question that remains unanswered, however, is why. Under examination by Commissioner Hall, the RLECs' witness asserted that there is "good reason" for the "reasonable period of time" limitation imposed in the FCC's rules—namely, that "[i]f you allow a carrier to opt into an agreement – an evergreen agreement, you're not capturing those operational efficiencies" that "evolve over time" between the parties to the ICA. (Tr. p. 152-153). The FCC also has stated that "it would not make sense to permit a subsequent carrier to impose an agreement or term upon an incumbent LEC if the technical requirements of implementing that agreement or term had changed."[23]

Importantly, however, the RLECs make no such claim with regard to the *Sprint ICAs*. For example, they do not assert that any new side agreements, or procedural or operational efficiencies now exist between Sprint and the RLECs that would make the ICAs unsuitable for adoption under Section 252(i). Nor do they assert that they intend to terminate or renegotiate the ICAs at any time in the foreseeable future. In fact, the RLECs apparently have no complaints about the Sprint ICAs at all, as they concede that the Sprint ICAs are "valid agreement[s]." (Tr. p. 162-164).

The RLECs also fail to address the facts that weigh heavily in favor of allowing Time Warner Cable to adopt the Sprint ICAs. As an initial matter, Time Warner Cable proposes to step into the shoes of Sprint and provide the exact services that Sprint currently provides. On this basis alone, it is hard to imagine ICAs that are more appropriate for opt-in under Section 252(i). Moreover, adoption of the Sprint ICAs would obviate the need to arbitrate new ICAs

[23] *Local Competition Order* ¶ 1319 (emphasis added).

between Time Warner Cable and each of the RLECs. Arbitration of entirely new ICAs likely would require significant commitments of time and resources by not only the RLECs and Time Warner Cable, but this Commission as well. The FCC determined in the *Local Competition Order* that Section 252(i) was intended, in part, to eliminate such burdens and facilitate expedient competitive entry where possible.[24] Without any reasonable showing that a need exists to expend valuable and limited public resources, the Commission is unwilling to do so.

For the same reasons, we deny the RLECs' request to establish a general rule that ICAs are not available for adoption under Section 252(i) beyond their initial term. The testimony presented indicated that the FCC, the states, and the industry as a whole have not developed a specific standard. (Tr. p. 151). In a prior arbitration proceeding, the Commission declined to establish a bright-line rule as to what constitutes a "reasonable period of time," and stated that [w]hat may be reasonable in one situation may not be reasonable in another situation."[25] The RLECs have not convinced us to change our position or follow a different path than that of the FCC and the other states. Accordingly, we will continue to determine whether opt-in pursuant to Section 252(i) is appropriate based on the circumstances of a particular case.

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24 *See Local Competition Order* ¶ 1321 ("We conclude that the nondiscriminatory, pro-competition purpose of section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement.").

25 *Petition of ALLTEL Communications, Inc. for Arbitration with BellSouth Telecommunications*, Docket No. 2001-31-C, Order No. 2001-328, p. 24.

CONCLUSION

The Commission finds and concludes that Time Warner Cable is entitled to interconnection with the RLECs pursuant to 47 U.S.C. § 251 and that the Sprint ICAs are available for adoption by Time Warner Cable pursuant to 47 U.S.C. § 252(i).

IT IS THEREFORE ORDERED THAT:

a. Time Warner Cable is entitled as a telecommunications carrier to interconnect and exchange traffic with the RLECs pursuant to 47 U.S.C. § 251; and

c. The RLECs must allow Time Warner Cable to adopt the Sprint ICAs pursuant to 47 U.S.C. §252(i).

This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

_____
John E. Howard, Chairman

ATTEST:

_____
David A. Wright, Vice Chairman

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

In the Matter of	)	
	)	
Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable and Farmers Telephone Cooperative, Inc.	)	**Docket No. 2011-243-C**

In the Matter of	)	
	)	
Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable and Fort Mill Telephone Company	)	**Docket No. 2011-244-C**

In the Matter of	)	
	)	
Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable and Home Telephone Co., Inc.	)	**Docket No. 2011-245-C**

In the Matter of	)	
	)	
Petition for Arbitration of Interconnection Agreement between Time Warner Cable Information Services (South Carolina), LLC, doing business as Time Warner Cable and PBT Telecom, Inc.	)	**Docket No. 2011-246-C**

CERTIFICATE OF SERVICE

This is to certify that I, Toni C. Hawkins, a paralegal with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below **Time Warner Cable Information Services (South Carolina), LLC's Proposed Order** in the

dockets referenced above by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire
McNair Law Firm, P.A.
P.O. Box 11390
Columbia, SC 29211

C. Lessie Hammonds, Esquire
Jeffrey M. Nelson, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

Dated at Columbia, South Carolina this 5th day of October, 2011.

Toni C. Hawkins

Toni C. Hawkins